

Bankruptcy Reform and Update of NCUA Rules Regarding Qualified Financial Contracts

BACKGROUND

For several years, Congress has considered legislation to overhaul the bankruptcy laws to require debtors with the ability to repay some or all of their debt to do so.

The legislation would:

- Establish an income-based “means test” to determine which debtors are allowed to file for chapter 7 bankruptcy versus those who must file under chapter 13.
- Require debtors with incomes above regional median income (excluding living expenses and certain debts and priority claims) to submit a repayment plan.
- Enhance protection for children and spouses of persons who file for bankruptcy by making child support and alimony payments the highest payment priority.
- Discourage “bad faith” bankruptcies where debtors file repeatedly to stave off creditors indefinitely.
- Prevent debtors from reducing their obligations by switching their cases between bankruptcy chapters.
- Protect the right of credit union members to voluntarily reaffirm their debts.
- Clarify the rights of parties involved in a derivative contract and the treatment of that contract in the event of a counterparty failure. The provisions of Title IX also clarify NCUA’s role as a conservator of a failed credit union by allowing NCUA to transfer such contracts to a new solvent party.

Title IX of both House and Senate bills in the 109th Congress now make the appropriate references to the Federal Credit Union Act as a result of an NCUA amendment offered and accepted on the House floor in the 108th Congress (in 2003) by former Representative Patrick Toomey (R-PA) and Representative Brad Sherman (D-CA) that revised the legislation with respect to the termination and netting of financial contracts for federally insured credit unions. That bill, HR 975 was re-introduced as passed by the House in the 108th Congress in both the House and Senate in the 109th Congress as [S. 256](#) and [H.R. 685](#).

LEGISLATIVE STATUS

U.S. Senate

[S. 256](#), the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” was introduced on February 1, 2005; reported from the Judiciary Committee on February 17, 2005 and went to the Senate floor on February 8, 2005. The Senate passed the legislation on March 10, 2005 by a vote of 74 to 25.

U. S. House of Representatives

On February 9, 2005 [H.R. 685](#) was introduced, the “Bankruptcy Abuse Consumer Protection Act of 2005. It was referred to the Judiciary and Financial Services Committees.

The House Judiciary Committee took up and approved the Senate-passed bill, S 256 on March 16, 2005. The Committee vote in favor of reporting the legislation was 22 to 13.

The House of Representatives passed S 256 on April 14, 2005 by a vote of 302-16.

Enacted into Law

[Public Law 109-8](#)

President Bush signed S 256 into law on April 20, 2005

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